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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/752,704 | 12/28/2000 | J. A. Nolen | 1387.006USU | 9405 |

7590

05/09/2002

George W. Rauchfuss, Jr.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, Ninth Floor
Stamford, CT 06901-2682

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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| EXAMINER |
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DATE MAILED: 3/14/02

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 3/14/02

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 212.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1 - 21 is/are pending in the application.

Of the above, claim(s) 1, 2, 18-21 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 3-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Receipt is acknowledged of amendment/election of 3/14/02.

Applicant's election with traverse of methods with carbon dioxide in Paper No. 6 is acknowledged. The traversal is on the ground(s) that examiner has shown no support for allegations that compositions, and articles, can be otherwise used than as claimed, such as in feeds and species are also stated to be unsupported as to distinctness. This is not found persuasive because responding to identifying support for use in methods other than as claimed would constitute the burdensome search in other classes for patentability distinct inventions, or experimentation, neither of which examiner is required to do. Applicant has not declared species as equivalent, so the species requirement, drawn to patentably distinct species, also remains in place.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1, 2, 18-21 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen 5205064 and Wigton et al 5813166 in view of Vander Meer et al.

Nolen states different combination of components are effective for specific insects—carbon dioxide and an appropriate pheromone can be used to attract close and far insects, respectively (column 3, lines 15-18, 33-34 and column 4, lines 42-44). Means are pressurized, to attract mosquitoes, with octenol. Wigton show slow release by evaporation can be controlled, to permit desired rate of release (column 3, lines 17-23). Here at 0.5 mg/hom. Simultaneous release is shown, controllable by operator (column 3, lines 16-66). Thus one of ordinary skill in the art of mosquito control would find it obvious to use the Nolen-Wigton means, as desired to attract and dispose of mosquitoes, with the chemical attractant chosen, as taught by Nolen, as optimum agent for control of the particular species of concern. This is shown by VanderMeer—mosquitoes and ants are repelled, by acids and esters, but the 1-octyn-3-ol is shown as

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equivalent to 1-octen-3-ol (column 3, line 61), thus obvious to use as 1-octen-3-ol in the Nolen-Wigton devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.



Levy:mv
May 8, 2002

NEIL S. LEVY
PRIMARY EXAMINER